



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Clerk

Prepared by: Lindsay Lara, City Clerk

City Manager Approval: _____

TOPIC: CONFLICT OF INTEREST CODE

SUBJECT: RESOLUTION REPEALING RESOLUTION NO. 14188, RE-ADOPTING THE FAIR POLITICAL PRACTICES COMMISSION MODEL CONFLICT OF INTEREST CODE AS THE CITY'S CONFLICT OF INTEREST CODE, AND ADOPTING A REVISED LIST OF DESIGNATED EMPLOYEE POSITIONS AND DISCLOSURE CATEGORIES, TO BE INCORPORATED INTO THE CITY'S CONFLICT OF INTEREST CODE

RECOMMENDATION:

Adopt a resolution repealing [Resolution 14188](#), re-adopting the [Fair Political Practices Commission](#) (FPPC) Model Conflict of Interest Code as the City's Conflict of Interest Code, and adopting a revised list of designated employee positions and disclosure categories, to be incorporated into the city's conflict of interest code.

BACKGROUND:

FPPC regulations require that, in every even-numbered year, each public agency review and, if necessary, revise that portion of the Conflict of Interest Code containing the agency's lists of designated positions and disclosure categories. These lists have been formulated using the criteria from FPPC regulations requiring that all local officials, who foreseeably may materially affect their private economic interests through the exercise of their public duties, disclose their economic interests by filing a Statement of Economic Interest (Form 700). Some officials are required to file disclosure statements because of their position, and others are required to file because of their duties.

In compliance with this FPPC requirement, the City Clerk worked with City departments to review and, if necessary, revise their lists of designated positions and disclosure categories to reflect the City's current organizational structure. These lists have now been revised with that information.

In addition, the FPPC has interpreted the Political Reform Act (PRA) to apply to members of those City boards and commissions with "decision-making authority," as well as to certain consultants. Boards and Commissions are considered to have

FOR CITY CLERK ONLY

Council Meeting: 09/04/2018

Disposition: Resolution No. 14566

“decision-making authority” if historically the recommendations of those boards and commissions have been routinely adopted by the City Council. Consultants are considered “public officials” for purposes of the PRA if they either serve in the capacity of a staff member or make recommendations that are routinely adopted by the City. The various City departments have provided updated information regarding the applicability of these regulations to their respective consultants as well as their boards and commissions, and that information has been used to update the Conflict of Interest Code.

A copy of this staff report will be provided to all those who will be required to file for the first time.

Copies of all statements of economic interest are kept on file in the City Clerk’s office for public review.

The disclosure requirements for Mayor, City Councilmembers, City Manager, City Attorney, City Treasurer, and the Planning Commissioners are set forth in Government Code Sections 87200-87210, and are not included in the City’s Code. These officials are covered under separate regulations and their disclosure statements are filed with the FPPC in Sacramento, with copies kept on file in the City Clerk’s office for public review.

FISCAL IMPACT:

No fiscal impact is anticipated from the adoption of this resolution.

ACTION:

Adopt Resolution

ATTACHMENTS:

1. Resolution for adoption, including Appendices A and B
2. Deputy City Attorney II - Memorandum dated June 28, 2018
3. Model FPPC Conflict of Interest Code (2 CCR Section 18730)

RESOLUTION NO. 14566

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL REPEALING RESOLUTION NO. 14188, RE-ADOPTING THE FPPC MODEL CONFLICT OF INTEREST CODE AS THE CITY'S CONFLICT OF INTEREST CODE, AND ADOPTING A REVISED LIST OF DESIGNATED EMPLOYEE POSITIONS AND DISCLOSURE CATEGORIES, TO BE INCORPORATED INTO THE CITY'S CONFLICT OF INTEREST CODE

WHEREAS, pursuant to California Government Code Sections 81000, et seq.

(The Political Reform Act, or PRA), the City Council has adopted by Resolution from time to time the Fair Political Practices Commission's (FPPC) model Conflict of Interest Code, contained at Title 2, California Code of Regulations, Section 18730, as the City's Conflict of Interest Code, and adopted therewith designated employee positions and disclosure categories for incorporation into the City's Conflict of Interest Code, most recently by Resolution No. 14188; and

WHEREAS, every even-numbered year every state agency and local governmental agency is required to review and, if necessary, revise its Conflict of Interest Code including review and revision of its list of designated employee positions and its list of disclosure categories, so as to incorporate such changes as the new titles of recently hired employees, deleted positions, and other organizational restructuring; and

WHEREAS, the Council has determined that the attached Appendices A and B accurately set forth those designated employee positions (Appendix A - Designated Employees) and disclosure categories of financial interest (Appendix B - Disclosure Categories), which should be made reportable under the City's Conflict of Interest Code; and

WHEREAS, the City Council desires to continue to use the FPPC's model Conflict of Interest Code, as set forth in Title 2, California Code of Regulations Section 18730, as the City's

Conflict of Interest Code, a copy of which is available for public review in the City Clerk's office;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
RESOLVES AS FOLLOWS:

1. The above-recited facts are true and correct.
2. Resolution 14188 is hereby repealed.
3. The FPPC's model Conflict of Interest Code, as set forth in Title 2, California Code of Regulations Section 18730, is hereby re-adopted as the City's Conflict of Interest Code.
4. The attached list of designated employee positions (Appendix A) and list of disclosure categories (Appendix B) are hereby adopted and incorporated into the City of San Rafael's Conflict of Interest Code.
5. The officials and employees holding designated positions shall file statements of economic interests (Form 700) as required by regulations of the FPPC and by Section 4 (C) of the City's Conflict of Interest Code, with the City Clerk, and the City Council hereby delegates the authority of filing officer to the City Clerk.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on Tuesday, the 4th day of September 2018 by the following vote, to wit:

AYES: COUNCILMEMBERS: Bushey, Colin, Gamblin, McCullough & Mayor Phillips

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



LINDSAY LARA, City Clerk

Attached:

1. Appendix A - Designated Employees
2. Appendix B - Disclosure Categories

APPENDIX A
Designated Employees

<u>DEPARTMENT</u>	<u>POSITION</u>	<u>DISCLOSURE CATEGORY</u>
All Departments	Management Analyst Series	1, 2
	Administrative Analyst	1, 2
	Professional Analyst (Fixed Term)	1, 2
	Business Systems Analyst (Fixed Term)	1, 2
City Attorney	Assistant City Attorney	1, 2
	Deputy City Attorney II	1, 2
City Clerk	City Clerk	1, 2
	Deputy City Clerk	1, 2
City Manager	Assistant City Manager	1, 2
	Director of Homeless Planning & Outreach	1, 2
	Director of Economic Development and Innovation	1, 2
	Economic Development Program Coordinator	1, 2
	Events Coordinator	1, 2
	Sustainability and Volunteer Program Coordinator	1, 2
Community Development	Community Development Director	1, 2
	Planning Manager	1, 2
	Senior Planner	1, 2
	Associate Planner	1, 2
	Assistant Planner	1, 2
	Planning Technician	1, 2
	Senior / Code Enforcement Supervisor	1, 2
	Code Enforcement Official III	1, 2
	Code Enforcement Official II	1, 2
	Code Enforcement Official I	1, 2
	Chief Building Official	1, 2
	Permit Services Coordinator	1, 2
	Senior Building Inspector	1, 2
	Building Inspector II	1, 2
	Building Inspector I	1, 2
Community Services	Community Services Director	1, 2
	Senior Recreation Supervisor	3a, 3b, 3f, 3g
	Recreation Supervisor	3a, 3b, 3f, 3g
	Program Coordinator	3a, 3b, 3f, 3g
	Recreation Coordinator	3a, 3b, 3f, 3g
Fire	Fire Chief	1, 2
	Deputy Fire Chief	1, 2
	Battalion Chief - Operations	1, 2
	Battalion Chief - Administration	1, 2
	Administrative Fire Captain	2, 3d, 3e, 3g
	Deputy Fire Marshal	1, 2
	Fire Prevention Specialist	2, 3d, 3e, 3g
	Fire Prevention Inspector II	2, 3d, 3e, 3g
	Fire Prevention Inspector I	2, 3d, 3e, 3g
	Environmental Management Coordinator	2, 3d, 3e, 3g
	Emergency Management Coordinator	2, 3d, 3e, 3g

<u>DEPARTMENT</u>	<u>POSITION</u>	<u>DISCLOSURE CATEGORY</u>	
Finance	Vegetation Management Specialist	2, 3d, 3e, 3g	
	Accounting Manager	1, 2	
	Revenue Supervisor	1, 2	
	ERP Project Manager (Fixed Term)	1, 2	
	Principal Accountant	1, 2	
	Senior Accountant	1, 2	
	Payroll Administrator	3a, 3c, 3g	
Library	Library Director	1, 2	
	Assistant Library Director	1, 2	
Management Services	Human Resources Director	1, 2	
	Human Resources Coordinator	1, 2	
	Management Analyst Series	1, 2	
	Information Technology Manager	1, 2	
	Senior Network Administrator	3a, 3d, 3g	
	Network Analyst	3a, 3d, 3g	
	Parking Services Manager	1, 2	
	Parking Operations Supervisor	2, 3a, 3d, 3g	
Police	Chief of Police	1, 2	
	Police Captain	1, 2	
	Police Lieutenant	1, 2	
	Police Support Services Supervisor	3d, 3e, 3f, 3g	
	Police Community Services Officer	3d, 3f, 3g	
	Youth Services Program Supervisor	3d, 3f, 3g	
Public Works / Sanitation District	Public Works Director	1, 2	
	Assistant Public Works Director / City Engineer	1, 2	
	Deputy Public Works Director	1, 2	
	Senior Civil Engineer	1, 2	
	Associate Civil Engineer	1, 2	
	Assistant Civil Engineer	1, 2	
	Sr. Associate Engineer	1, 2	
	Jr. Engineer	3e, 3g	
	GIS Analyst	3e, 3g	
	Engineering Technician I	3e, 3g	
	Engineering Technician II	3e, 3g	
	Traffic Engineer	1, 2	
	Traffic Engineering Technician I	3e, 3g	
	Traffic Engineering Technician II	3e, 3g	
	Streets Maintenance Supervisor	1, 2	
	Parks Maintenance Supervisor	1, 2	
	Operations and Maintenance Manager	1, 2	
	Facility Repair Supervisor	3d, 3e, 3f	
	Shop & Equipment Supervisor	3d, 3e, 3f	
	District Manager / District Engineer, Sanitation District	1, 2	
	Sr. Civil Engineer, Sanitation District	1, 2	
	Associate Civil Engineer	1, 2	
	Jr. Engineer	1, 2	
	Sewers Maintenance Supervisor	3d, 3e, 3f	
	Sewer Maintenance Superintendent	3d, 3e, 3f	
	Boards & Commissions	Design Review Board	1, 2

DEPARTMENT

POSITION

**DISCLOSURE
CATEGORY**

Consultants **

Park & Recreation Commission

1, 2

1, 2

** With respect to Consultants, the relevant department director may determine in writing that a particular consultant is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in these categories. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The department director shall forward a copy of this determination to the City Clerk. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

Designated Employees 2018

APPENDIX B

Disclosure Categories

Category 1: All investments and sources of income.

Category 2: All interests in real property in the state of California.

Category 3: Investments in business entities and sources of income of the type which have or foreseeably could contract with the City to provide services, supplies, materials, machinery, or equipment; or which could be enhanced when a designated employee makes or participates in making a decision.

- a. Personnel agencies or personnel consultants;
- b. Municode and Marin County newspapers;
- c. Financial institutions;
- d. Department record forms, communications equipment, safety equipment, firefighting or fire detection equipment, automotive or rolling stock sales, automotive parts or equipment, general departmental supplies or equipment;
- e. Building supplies or building, contractor, or construction firms;
- f. Travel agencies, recreation and athletic supplies, building maintenance and cleaning supplies;
- g. Book, software, and audio-visual publishers and distributors; computer equipment manufacturers and distributors.

NOTE: PENALTY FOR LATE FILING:

AS REQUIRED UNDER THE POLITICAL REFORM ACT OF 1974, AS AMENDED, SECTION 91013, IF ANY PERSON FILES AN ORIGINAL STATEMENT AFTER ANY DEADLINE, HE SHALL BE LIABLE IN THE AMOUNT OF \$10.00 PER DAY AFTER THE DEADLINE UNTIL THE STATEMENT IS FILED, UP TO A MAXIMUM OF \$100.00, WHICHEVER IS GREATER.

**CITY OF SAN RAFAEL
San Rafael, California**

INTERDEPARTMENTAL MEMORANDUM

DATE: June 28, 2018
TO: LINDSAY LARA, City Clerk
FROM: LAUREN M. MONSON, Deputy City Attorney II
RE: Amendment of Conflicts of Interest Code

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California Government Code §87306.5 requires that the City review and, if necessary, revise its Conflict of Interest Code every two years. The deadline for the current review and revision of the Conflict of Interest Code is October 1, 2018.

In 2004, the City of San Rafael adopted a Conflict of Interest Code (SRMC Chapter 2.10) which incorporated by reference the Fair Political Practice Commission’s (“FPPC”) model Conflict of Interest Code in 2 Cal. Code Regs. Section 18730. While this Code is automatically amended whenever the model code is changed, the City is required to review and, if necessary, to revise its list of “Designated Employees” (those employees required to file statements of economic interest, Form 700) and its list of “Disclosure Categories” (the economic interests which must be disclosed on the Form 700). The last review and revision was made on September 19, 2016 by City Council Resolution No. 14188, and the current lists of Designated Employees and Disclosure Categories are attached as Appendices “A” and “B” to that Resolution. Because of new positions, changed circumstances and structural reorganization within City Departments, the list of “Designated Employees” and the list of applicable “Disclosure Categories” may need to be revised. Please forward copies of those Appendices to all Department Directors. Department Directors should review their department employee positions, the disclosure categories applicable to those positions and, if appropriate, revise both lists. Revised lists should be forwarded to you in sufficient time for City Council adoption of any changes by its September 4, 2018 meeting.

WHO IS COVERED

Under the Political Reform Act (“PRA”), all local public officials, who foreseeably may materially affect their own economic interests through their decisions or participation in decisions in their official capacity, must disclose their economic interests by completing and filing with the City Clerk Form 700. Persons required to disclose such economic interests fall into two general classifications:

1. Those required to file disclosures because of their position (state constitutional officers, legislators, county supervisors, mayors, council members, etc.). Government Code §§87200-87210. Because the Government Code specifically covers these individuals, they are **not** covered under the City's Conflict of Interest Code. These positions include members of the City Council, the Mayor, members of the Planning Commission, the City Manager, the Finance Director, and the City Attorney.

2. Those required to file disclosures because of their duties (public officials and employees who make or participate in the making of governmental decisions). These include "Designated Employees", those members of City Boards and Commissions with decision-making authority and certain consultants. These positions are covered under the City's Conflict of Interest Code, adopted pursuant to Government Code §§87300-87313, and accordingly, are the focus of this review and revision.

A. **Boards & Commissions:**

The Fair Political Practices Commission has interpreted the PRA to apply to members of all City boards, committees and commissions with decision-making authority. (2 Cal. Code Regs. §18700(a) (1)). A board, committee or commission has decision-making authority if:

1. It may make a final governmental decision; or
2. It may compel or prevent the making of a governmental decision by its action or inaction; or
3. Its recommendations are, and historically have been, routinely and regularly followed

(2 Cal. Code Regs. §18700(a)(b) & (c)).

Accordingly, if historically, the recommendations of an advisory board (e.g. Design Review Board) have been consistently adopted by the Planning Commission or the City Council, the members of such board, committee or commission must file disclosure statements of their economic interests. Because a board or commission is titled "advisory" is not determinative of whether it has "decision-making authority"; only an historical analysis of a board or commission's "actions" can determine its status.

B. **Designated Employees:**

The PRA's requirements apply to those officials, employees or consultants who either make decisions or who participate in the decision-making process. The FPPC has determined that officials, employees or consultants who negotiate for, or provide advice to the decision-maker by way of research, reports or analysis, are "participating in the decision-making process." As such,

these officials, employees and consultants must be included in the list of “Designated Employees” and must file disclosure statements in the manner detailed in the City’s Conflict of Interest Code.

WHAT MUST BE DONE

In order to comply with the PRA’s requirement of updating the Conflict of Interest Code, each City Department Director should do the following:

1. Review his/her duties and the duties of the department/agency employees to determine whether particular positions should be added or deleted to the list of “Designated Employees.” Delete positions which no longer exist or no longer are involved in the decision making process and add those new positions which are involved in the decision making process.
2. Review the functions and duties of any boards, committees or commissions with which the department/agency interacts to determine whether they meet the criteria to file disclosure statements of economic interest.
3. Review the functions and duties of any department-retained consultants to determine whether they meet the criteria to file disclosure statements.

After determining what positions must be designated, the Department Directors should next determine which categories shall apply to each position. This determination is fact-driven by the job-functions of a particular position and their relationship to potential financial interests over which that position might have some control. In performing this review, department managers should keep in mind that the City’s Conflict of Interest Code and its listed “Designated Employees” and “Disclosure Categories” must:

1. Provide reasonable assurance that all foreseeable conflict-of-interest situations will be disclosed.
2. Provide each affected person a clear and specific statement of his/her duties under the Code.
3. Provide adequate differentiation between “Designated Employees” with different powers and responsibilities.

(Government Code §87309).

After making the revisions to their lists of designated employees and disclosure categories, Department Directors should forward their revisions to your office.

EXAMPLE

In order to assist Directors in their review, the following example may be helpful. An employee or consultant who negotiates, recommends or otherwise participates in the procurement of computers should be designated on the list of “Designated Employees” under the above criteria. Such an employee or consultant would be required to disclose any interests under category 3 (“Investments in Business Entities and Sources of Income”) but would most likely not be required to disclose real property interests. As a city official who has authority to purchase goods, the object of the PRA would be achieved by having this official disclose interests in businesses which sell computers. The same type of analysis would be applicable to employees or consultants who participate in the procurement of office supplies, library books, equipment, materials or services.

As an additional aid in determining who to include in a Department’s list of “Designated Employees,” I have attached the FPPC’s fact sheets on “How to Determine Who Should Be Designated in a Conflict of Interest Code,” and “Conflict-of-Interest Codes – Designating Positions.”

If you have any additional questions, please contact me.

Attachments

cc: Mayor & Council Members
Jim Schutz, City Manager
Rob Epstein, City Attorney

APPENDIX A
Designated Employees

<u>DEPARTMENT</u>	<u>POSITION</u>	<u>DISCLOSURE CATEGORY</u>
City Attorney	Assistant City Attorney	1, 2
	Deputy City Attorney II	1, 2
City Clerk	City Clerk	3b, 3g
	Deputy City Clerk	3b, 3g
City Manager	Assistant City Manager	1, 2
	Director of Homeless Planning & Outreach	1, 2
	Director of Economic Development and Innovation	1, 2
	Economic Development Program Coordinator	1, 2
	Events Coordinator	1, 2
Community Development	Community Development Director	1, 2
	Planning Manager	1, 2
	Senior Planner	1, 2
	Associate Planner	1, 2
	Assistant Planner	1, 2
	Planning Technician	1, 2
	Code Enforcement Official III	1, 2
	Code Enforcement Official II	
	Code Enforcement Official I	1, 2
	Chief Building Official	1, 2
	Permit Services Coordinator	1, 2
	Building Inspector II	3e
	Building Inspector I	3e
Community Services	Community Services Director	3f, 3g
	Senior Recreation Supervisor	3f, 3g
	Recreation Supervisor	3f, 3g
	Program Coordinator	3f, 3g
Fire	Fire Chief	2, 3d, 3e, 3g
	Deputy Fire Chief	2, 3d, 3e, 3g
	Battalion Chief - Operations	2, 3d, 3e, 3g
	Battalion Chief – Administration	2, 3d, 3e, 3g
	Administrative Fire Captain	2, 3d, 3e, 3g
	Deputy Fire Marshal	2, 3d, 3e, 3g
	Fire Prevention Specialist	2, 3d, 3e, 3g
	Fire Prevention Inspector II	2, 3d, 3e, 3g
	Fire Prevention Inspector I	2, 3d, 3e, 3g
	Environmental Management Coordinator	2, 3d, 3e, 3g
	Emergency Management coordinator	2, 3d, 3e, 3g
	Vegetation Management Specialist	2, 3d, 3e, 3g
	Finance	Finance Director
Accounting Supervisor		1, 2
Revenue Supervisor		2, 3 (in entirety)
Management Analyst		1, 2
Library	Library Director	3d, 3g
	Assistant Library Director	3d, 3g
Management Services	Human Resources Director	3a, 3g
	Senior Management Analyst	3a, 3g
	Information Technology Manager	3d, 3e, 3g

<u>DEPARTMENT</u>	<u>POSITION</u>	<u>DISCLOSURE CATEGORY</u>
	Senior Network Administrator	3d, 3e, 3g
	Network Analyst	3d, 3g
	Parking Services Manager	1, 2
	Parking Operations Supervisor	2, 3d, 3g
	Administrative Analyst	2, 3d, 3g
Police	Chief of Police	3d, 3e, 3f, 3g
	Police Captain	3d, 3e, 3f, 3g
	Police Lieutenant	3d, 3e, 3f, 3g
	Civilian Supervisor	3d, 3e, 3f, 3g
	Training Officer	3f, 3g
	Youth Services Program Supervisor	3r, 3g
Public Works / Sanitation District	Public Works Director	1, 2
	Assistant Public Works Director / City Engineer	1, 2
	Administrative Manager	1, 2
	Associate Civil Engineer	1, 2
	Assistant Civil Engineer	3g
	Sr. Associate Engineer	3g
	Jr. Engineer	3g
	Associate Engineer	3g
	Assistant Engineer	3g
	GIS Analyst	3g
	Engineering Technician I	3g
	Engineering Technician II	3g
	Traffic Engineer	3g
	Traffic Engineering Technician I	3g
	Traffic Engineering Technician II	3g
	Streets Superintendent	1, 2
	Streets Maintenance Supervisor	1, 2
	Parks Superintendent	3d, 3e
	Parks Maintenance Supervisor	3d, 3e
	Garage Shop & Equipment Supervisor	3d
	District Manager / District Engineer, Sanitation District	1, 2
	Sr. Civil Engineer, Sanitation District	1, 2
	Associate Civil Engineer	1, 2
	Sewers Maintenance Supervisor	3e
	Sewer Maintenance Superintendent	3e
Boards & Commissions	Design Review Board	1, 2
	Geotechnical Review Board	1, 2
	Park & Recreation Commission	1, 2
Consultants **		1, 2

** With respect to Consultants, the relevant department director may determine in writing that a particular consultant is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in these categories. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The department director shall forward a copy of this determination to the City Clerk. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

Designated Employees 2016

APPENDIX B

Disclosure Categories

Category 1: All investments and sources of income.

Category 2: All interests in real property.

Category 3: Investments in business entities and sources of income of the type which have or foreseeably could contract with the City to provide services, supplies, materials, machinery, or equipment; or which could be enhanced when a designated employee makes or participates in making a decision.

- a. Personnel agencies or personnel consultants;
- b. Municode and Marin County newspapers;
- c. Financial institutions;
- d. Department record forms, communications equipment, safety equipment, firefighting or fire detection equipment, automotive or rolling stock sales, automotive parts or equipment, general departmental supplies or equipment;
- e. Building supplies or building, contractor, or construction firms;
- f. Travel agencies, recreation and athletic supplies, building maintenance and cleaning supplies;
- g. Book, software, and audio-visual publishers and distributors; computer equipment manufacturers and distributors.

NOTE: PENALTY FOR LATE FILING:

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California Fair Political Practices Commission

Conflict-of-Interest Codes - Designating Positions

Introduction

The FPPC is frequently asked why an agency cannot require all of its employees to file a Form 700, Statement of Economic Interests. The following discussion outlines the statutory¹ and regulatory requirements that provide the basis for determining which positions should be designated.

Discussion

One of the most frequent questions to FPPC staff is how does an agency determine which positions should be included in a conflict-of-interest code. The answer is that each agency is unique, and the list of positions is dependent upon several factors. For example, an analyst in one agency may not even be covered in a conflict-of-interest code because that position has no purchasing authority, and its regulatory related duties are substantially reviewed by more than one supervisor and director. In another agency, the analyst may have full authority with little oversight. The following discussion provides background on the statutes, regulations, and guidance provided through advice letters.

The Political Reform Act (“Act”) requires that “every agency shall adopt and promulgate a conflict-of-interest code.” (Section 87300.) Section 87302(a) provides that a conflict-of-interest code shall contain “specific enumeration of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest.” The term “public official” is defined, in part, in Section 82048 as “. . . every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government.” With respect to each such position, a code is required to list the specific types of investments, interests in real property, and income that must be disclosed. The responsibility for determining if a code meets these specifications rests with the “code reviewing body.” (Section 87303.)

Section 87309 states what a conflict-of-interest code must contain before it may be approved by the code reviewing body. Paragraph (c) of that section provides that a code may not be approved if it “fails to adequately differentiate between designated employees with different powers and responsibilities.” This provision is intended to ensure, first, that a conflict-of-interest code requires financial disclosure only from employees required to be designated by Section 87302(a) and, second, that a code

¹ All statutory references are to the Government Code unless otherwise noted.

relate disclosure to the specific duties of such designated employees. Thus, a code reviewing body would fail to fulfill its obligation under Section 87309(c) if it allowed designation of positions in a code which, to quote the language of Section 87302(a), do not entail the “making or participation in the making” of governmental decisions. It would be equally improper for a code reviewing body to require disclosure of interests that may not foreseeably be affected materially by decisions made or participated in by designated employees.

In *City of Carmel-by-the-Sea v. Young*, the Supreme Court held, in general, that there must be a balancing of interests between the government’s need to expose or minimize possible conflicts of interest on the one hand, and the right to maintain privacy in one’s personal financial affairs while seeking or holding public office on the other. (2 Cal.3d 259 (1970).) Required disclosure of economic interests under the Act has been found to be appropriate where it is narrowly tailored to avoid unwarranted intrusion into the privacy of the public officials involved. (See, *Hays v. Wood*, 25 Cal.3d 770 (1979).)

A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) Therefore, such positions should be designated in the agency’s conflict-of-interest code.

A public official “participates in a governmental decision” when, acting within the authority of his or her position and without significant substantive or intervening review, the official negotiates, advises, or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18702.2.) If a superior relies on an individual’s professional judgment, then the individual is participating in making a governmental decision. In other words, if the individual influences the final decision by supporting a position or suggesting a course of action, he/she is participating in the decision even if he/she is not making the final decision. Therefore, the individual’s position must be designated in the conflict-of-interest code.

There are several techniques to assist in making the determination of which positions need to be designated in the code. These include reviewing organizational charts – generally, the positions closest to the top must be designated in the code. The larger the agency, the more likely it is that lower level positions have narrower duties and additional, substantive review, and therefore, do not need to be designated. Meeting minutes and annual reports also provide information on the position responsibilities and provide insight as to which positions warrant supplementary review. Additionally, agency websites (such as the contact us page) may provide clues as to whether all positions on an organizational chart are up to date. And lastly, current job duty statements should be requested.

Summary

High level positions that have authority to vote on a matter, appoint a person, obligate or commit his or her agency to a course of action, or enter into any contractual agreement on behalf of his or her agency, mid-level positions that have authority to negotiate decisions on behalf of the agency without significant substantive review, and positions that advise or make recommendations to the decision-maker by conducting research or an investigation, preparing or presenting a report, analysis or opinion that requires the exercise of judgment on the part of the employee and the employee is attempting to influence the decision, should all be designated in the conflict-of-interest code. Positions that are strictly manual, clerical, or ministerial in nature should not be designated in the conflict-of-interest code. It is important to note that an express purpose of the Act is to ensure that the assets and income of public officials be disclosed so that conflicts of interests may be avoided. However, as discussed in the foregoing paragraphs, only those positions that make or participate in making governmental decisions are required to report assets and income on a public form. Thus, the agency and code reviewing body must take a careful look at the agency's governmental programs and functions as well as the specific duties of those positions being designated in the code.

How to Determine Who Should be Designated In a Conflict of Interest Code¹

Determining Who Makes or Participates in the Making of Governmental Decisions:

Making a governmental decision, means the person:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action; or
- (4) Enters into any contractual agreement on behalf of his or her agency.

Participating in the making of a decision, means the person:

- (1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or
- (2) Advises or makes recommendations to the decision-maker by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the employee and the employee is attempting to influence the decision.

Who is a Designated Employee?

A designated employee is an officer, employee, member or consultant of an agency whose position is designated in the code because the position entails the making or participation in the making of governmental decisions which may foreseeably have a material effect on any financial interest. (*Government Code Section 82019.*)

To determine who should be designated in the code, you need to know who within the agency makes or participates in the making of governmental decisions. (*FPPC Regulation 2 Cal. Code of Regs. Section 18701-18702.4.*)

Who Should Not be Designated?

The term "designated employee" does not include:

- Public officials specified in Government Code Section 87200
 - board of supervisors
 - chief administrative officers
 - district attorneys
 - county counsels
 - county treasurers
 - planning commissioners
 - city councilmembers
 - mayors
 - city managers
 - city attorneys
 - city treasurers
 - other city, county and local agency public officials who manage public investments
- Solely clerical, ministerial or manual positions
- Members of boards or commissions which are solely advisory and do not make substantive recommendations

Checking Duty Statement and Job Description:

You can determine who should be designated in the code by first eliminating those positions outlined above that are not designated employees.

Next, evaluate the remaining employees, members, officers or consultants of your agency. Top level management personnel are normally broad policy makers and should be designated. Look at each position to determine if it makes or participates in the making of governmental decisions. One way to accomplish this is by reviewing duty statements or job descriptions.

¹This fact sheet should not be used to determine whether your agency is required to adopt a conflict of interest code. Contact the FPPC for assistance in making that determination.

Consultants in a Conflict of Interest Code

Who is a Consultant? The Political Reform Act (Gov. Code Sections 81000-91015) provides that "no public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Section 87100.) In addition, the Act requires every public official to disclose those economic interests that could foreseeably be affected by the exercise of his or her duties. (Sections 87200-87313.)

The term "public official" includes consultants: "Public official at any level of state or local government" means a member, officer, employee, or *consultant* of a state or local government agency." (Gov. Code Section 82048.)

Regulation 18701(a)(2) defines "consultant" as an individual who, pursuant to a contract with a state or local government agency:

- (A) Makes a governmental decision whether to:
- (i) Approve a rate, rule, or regulation;
 - (ii) Adopt or enforce a law;
 - (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 - (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
 - (v) Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
 - (vi) Grant agency approval to a plan, design, report, study, or similar item;
 - (vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof;

-OR-

- (B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision (Regulation 18702.2) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

Consultants are Individuals

It is not the business or firm providing services to your agency that is considered the consultant. The *individual(s)* working for the firm who provide the services are considered the consultants. These individuals must file statements of economic interests based on their *personal* financial interests and are subject to disqualification and other laws affecting public officials.

Serving in a Staff Capacity

The regulation includes only those individuals who either "participate in making" governmental decisions or are performing substantially all the same tasks that normally would be performed by staff members of a governmental entity. In most cases, individuals who work on just one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. (Memorandum to the Commission dated March 28, 1994.) For example, suppose an individual contracted with a city to study noise at a specified intersection. If the individual took the noise measurements in one day, and issued a report to the planning commission before its next meeting, the individual normally would not be serving in a staff capacity. If, however, a firm's

contract provided that it would provide all plan checking services for a city for five years, it is much more likely that individuals performing these services would be in a quasi-staff capacity.

An individual who makes a governmental decision listed above or serves in staff capacity with the agency is considered a public official who must file a statement of economic interests. This applies even if an agency fails to properly designate a consultant in a conflict of interest code because the disqualification provisions of the Political Reform Act operate as soon as an individual becomes a public official. The individual is subject to the Act's gift limits and conflict of interest provisions.

Examples

An attorney hired to perform ongoing legal services for an agency would usually be considered a consultant. Attorneys generally have broad powers to affect decisions which could foreseeably and materially affect their financial interests. These powers include the authority to represent and bind the agency to a course of action in litigation and contract matters. Attorneys often make governmental decisions listed in Regulation 18701(a)(2)(A) and/or serve in a staff capacity with the agency. However, an attorney hired to work on one discrete litigation matter, who was not making any governmental decisions listed above, would not be considered to be working in a "staff capacity" and, therefore, would not be a consultant. (Memorandum to the Commission, March 28, 1994.)

An investment firm provides consulting services to a county employee's retirement association. Pursuant to a contract, employees of the investment firm attend all board meetings and subcommittee meetings where investment issues are discussed. Employees of the investment firm are required to perform other services and provide reports on investment issues as requested by the retirement board or staff. Because the employees of the investment advisor serve on an ongoing basis as staff for the retirement board, and in that capacity participate in the making of all investment decisions, they are considered consultants under the Act. (*Randolph* Advice Letter, No. I-95-045.)

Individual members of a consulting firm who prepare an EIS/EIR report for the Sacramento Regional Transit District's ("RT") Folsom light rail extension are consultants and should be designated in a conflict of interest code. RT hires environmental consultants on an as-needed basis to prepare extensive or technical environmental studies which cannot be completed by its staff. RT hires environmental consultants for each project. The consulting firm will be under contract with RT to provide environmental services for three projects extending over at least three years. The consultant conducts research and makes investigations that require exercise of its expertise and judgment, and prepares the report. The consultant's role also encompasses recommending to RT's board of directors approval of agreements and permits it negotiates and approval of the environmental report. Although the RT board reviews the report and related documents, because of the technical nature of the study, the consultant's conclusions and recommendations are accepted without significant intervening substantive review. In addition, members of the consulting firm have authority to negotiate contracts and recommend RT's approval without significant independent review by RT. (*Patterson* Advice Letter, No. A-97-570.)

The Commission realizes that not all consultants participate in making decisions on behalf of public agencies. Rather than amend your code each time you retain a consultant who is in a decision-making capacity, you may use a specialized disclosure category which provides that the disclosure required of consultants shall be determined on a case-by-case basis by the chief executive officer. The chief executive officer may make a determination as to what disclosure, if any, is required by any particular consultant.

This consultant disclosure category should be part of the code. You should add the position "consultant" as a designated position in the appendix of the code with a footnote as shown in the following example:

Consultant*

**Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:*

The (executive director or executive officer) may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in this section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The (executive director's or executive officer's) determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.



This fact sheet highlights provisions of the Act concerning consultants. You should not rely on the fact sheet alone to ensure compliance with the Act. If you have any questions, consult the Act and regulations or contact the Fair Political Practices Commission at (916) 322-5660, or toll-free at (866) 275-3772. The Political Reform Act, regulations, fact sheets, and other important information are available on the Commission's website, www.fppc.ca.gov.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18730. Provisions of Conflict of Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories

are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than \$10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

(D) This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$470.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$470 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected

officer has been elected or over which that elected officer's agency has direction and control.

This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans from a person which, in the aggregate, do not exceed \$500 at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made.

b. The date the last payment of \$100 or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action.

Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$470 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be

made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

¹ Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

² See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵ A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14).
Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).
7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).

9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).
10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).
11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.
12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).
16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).

19. Editorial correction of subsection (a) (Register 98, No. 47).

20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).

22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).

23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District,

nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

25. Editorial correction of History 24 (Register 2003, No. 12).

26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).

28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).

31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of*

Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

32. Amendment of section heading and subsections (a)-(b)(1), (b)(3)-(4), (b)(5)(C), (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) and amendment of footnote 1 filed 1-8-2013; operative 2-7-2013.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2013, No. 2).

33. Amendment of subsections (b)(8.1)-(b)(8.1)(A), (b)(8.2)(E)3. and (b)(9)(E) filed 12-15-2014; operative 1-1-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations.

Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2014, No. 51).

34. Redesignation of portions of subsection (b)(8)(A) as new subsections (b)(8)(B)-(D), amendment of subsections (b)(8.1)-(b)(8.1)(A), redesignation of portions of subsection (b)(8.1)(A) as new subsections (b)(8.1)(B)-(C) and amendment of subsection (b)(9)(E) filed 12-1-2016; operative 12-31-2016 pursuant to Cal. Code Regs. tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision,

April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 49).